IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

OP.No. 18753 of 2000(G)

PETITIONER:

C.C.DEVASSIA,
CHAKKALAKKAL HOUSE,
COCHIN UNIVERSITY P..O.,
COCHIN – 22.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, SANTHI NAGAR, THIRUVANANTHAPURAM – 1.**

2. **MANAGING DIRECTOR, KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD., SANTHI NAGAR, THIRUVANANTHAPURAM – 1.**

3. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.A.MANHU, SC, SIDCO
BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.31153/2000 IN O.P.NO.18753/2000 G

CLOSED

4/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AGREEMENT DTD. 7/07/1995 EXECUTED AN AGREEMENT IN FAVOUR OF SIDCO.**

EXT.P1(A): **COPY OF THE MEMO NO.MTG(5)/SSK-EKM/287/97 DTD. 22/08/1995 ISSUED BY THE GENERAL MANAGER (RM & M) TO THE PETITIONER.**

EXT.P2: **COPY OF THE REPLY DTD. 25/09/1995 SUBMITTED BY THE PETITIONER BEFORE THE GENERAL MANAGER (RM&M).**

EXT.P3: **COPY OF THE PROCEEDINGS NO.MTG/SSE-EKM/287/95 DTD. 8/11/1995 ISSUED BY THE GENERAL MANAGER (RM & M).**

EXT.P4: **COPY OF THE SHOW CAUSE NOTICE NO.VIG/553/97 DTD. 15/03/1997 ISSUED BY THE 2ND RESPONDENT.**

EXT.P5: **COPY OF THE REPLY DTD. 2/05/1997 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P6: **COPY OF THE PROCEEDINGS NO.PER(7)/4305/98 DTD. 25/03/1998 ISSUED BY THE ADMINISTRATIVE OFFICER, SIDCO.**

EXT.P7: **COPY OF THE NOTICE NO.VIG/553/97 DTD. 29/07/98 ISSUED BY THE ADMINISTRATIVE OFFICER, SIDCO.**

EXT.P8; **COPY OF THE PROCEEDING NO.VIG/553/97 DTD. 19/09/1998 ISSUED BY THE 2ND RESPONDENT.**

EXT.P9: **COPY OF THE PROCEEDINGS NO.VIG/553/97 DTD. 10/11/1998 ISSUED BY THE 2ND RESPONDENT.**

EXT.P10: **COPY OF THE PROCEEDINGS NO.VIG/553/97 DTD. 28/03/2000 ISSUED BY THE 2ND RESPONDENT.**

EXT.P11: **COPY OF THE PROCEEDINGS NO.VIG/553/97 DTD. 6/04/2000 ISSUED BY THE 2ND RESPONDENT.**

...2/-

EXT.P12: COPY OF THE PROCEEDINGS NO.VIG/553/97 DTD. 17/06/2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P13: COPY OF THE RELEVANT EXTRACT OF THE SERVICE REGULATIONS.

1ST RESPONDENT'S EXHIBIT:

EXT.R1(A): COPY OF THE ORDER NO.37032/F2/96/ID INDUSTRIES (F) DEPARTMENT, GOVT. OF KERALA DTD. 26/05/2000 ISSUED BY THE GOVT. TO THE KERALA SMALL INDUSTRIES CORPN. LTD.

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J

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O.P.No. 18753 of 2000

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Dated this the 4th day of June, 2007

J U D G M E N T

Heard.

2. Petitioner was the Manager of the Sales Emporium of SIDCO in Ernakulam during the year 1995. SIDCO procured furniture from St.Mary's Wood Works & Industries and supplied it to the Harijan Hostel at Ernakulam, on requisition. Those goods were found to be substandard, by the Government, following inspection on the basis of anonymous complaints. SIDCO black listed the manufacturer and warned the petitioner.

3. Going by the counter affidavit, the Forest Department had certified that the wood used is Aanjili wood and there was no adverse comment about quality of the wood or the workmanship of the articles. The action taken by SIDCO against the manufacturer led to O.P.No.15824/1998 before this Court,

resulting in SIDCO being directed to release amounts to that unit, with interest.

4. Thereafter, the Vigilance Department of the State Government enquired into the matter and found that the furniture supplied to the Harijan Hostel were substandard and the unit was found to have committed certain irregularities. There upon, the Managing Director of SIDCO instructed the Senior Manager, Marketing, to black list that unit and suspend all transactions. This was done.

5. In the meanwhile, on 15/03/1997, Ext.P4 show cause notice with memo of charges was issued to the petitioner proposing disciplinary action. I may at once notice that the petitioner was not placed under suspension. He promptly gave Ext.P5 reply.

6. By Ext.P6 proceedings, the petitioner was relieved from services, with effect from 31/03/1998, on attaining the age of superannuation. Thus, the employer, SIDCO, had permitted the petitioner to retire from service.

7. Thereafter, ultimately, after enquiry, the petitioner was issued Ext.P12 proceedings, whereby, the disciplinary authority came to the conclusion that the possibility of imposing punishment is not contemplated in view of the fact that the petitioner had retired from service on 31/03/1998 and, accordingly, decided to recover an amount of Rs.1,11,970/- from the gratuity of the petitioner. This action is under challenge.

8. As already noticed, the petitioner retired and was relieved of his duties on superannuation by the decision of the employer in that regard, during the pendency of the disciplinary proceedings. It is not a case where he was placed under suspension and not permitted to superannuate during the pendency of the disciplinary proceedings. The disciplinary authority came to the conclusion that no penalty could be imposed on the petitioner. Under such circumstances, all that falls for consideration in this original petition is the legality or otherwise of the decision of the disciplinary authority which results in recovery from gratuity.

9. SIDCO is a Government company. Ext.P13 is the Staff Regulations that governs its employees. Regulation 114 provides for recovery from pay of the whole or part of the pecuniary loss caused to the Corporation by negligence or breach of orders, subject to the condition that the instalment of such recovery together with all the recoveries from the employee's salary for a month does not exceed 50 per cent of his pay at the time of the recovery. The show cause notice issued to the petitioner was as against proposed disciplinary proceedings. Regulation 111 enumerates the penalties which could be imposed on an employee. This includes clause (iv) which provides for recovery from pay, of the whole or part of any pecuniary loss caused to SIDCO by negligence or breach of orders on the part of the employee. Even if I were to take it that on the culmination of the disciplinary proceedings, the authority, having found, in its wisdom, that it is impermissible to impose a penalty, had imposed only recovery in terms of Regulation 114, such recovery could be only from pay. The Staff Regulations of SIDCO does not provide for recovery from gratuity. Hence, the recovery by way

of penalty or by recourse to Regulation 114, could only be from pay and not from gratuity.

10. That apart, the company cannot formulate a regulation for recovery from gratuity because the right to gratuity is governed by the Payment of Gratuity Act, 1972, which, as per Section 4 enjoins payment of gratuity subject to whatever is provided by that Statute. Going by those statutory provisions, an employer is entitled to forfeit gratuity, either wholly or partially, only to the extent provided under Sub-section (6) of Section 4 of that Act. That provision comes into play only in cases where the services of an employee are terminated. It therefore does not apply to a case where the delinquent employee was permitted to retire on superannuation. Such forfeiture under Section 4(6) of the Payment of Gratuity Act, 1972 can be imposed only when the services of the employee have been terminated. Indisputably, in the case in hand, the services of the petitioner were not terminated.

11. For the foregoing reasons, the impugned recovery from the gratuity of the petitioner is illegal and is liable to be set aside.

12. In the result, the decision contained in the impugned Ext.P12 is set aside. It is directed that all amounts withheld from the gratuity due to the petitioner shall be released. Having regard to the totality of the facts and circumstances, claims for interest and costs are refused. The respondents shall satisfy the directions contained in this judgment, within six months from the date of receipt of a copy of this judgment.

The original petition is allowed as above.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 18753 of 2000

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J U D G M E N T

4th June, 2007